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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

MAY 26 1992

Federal Communications Commission  
Office of the Secretary

In the Matter of

The Telephone Consumer Protection  
Act of 1991

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CC Docket No. 92-90

COMMENTS OF THE NORTH AMERICAN TELECOMMUNICATIONS ASSOCIATION

The North American Telecommunications Association ("NATA") hereby submits comments on the Commission's Notice of Proposed Rulemaking in these proceedings, FCC 92-176, released April 17, 1992.

STATEMENT OF INTEREST

NATA is a trade association comprising over 600 manufacturers, suppliers, distributors, and users of customer premises business telecommunications equipment. Founded in 1970, NATA is dedicated to the expansion of the competitive U.S. business communications market and to the maintenance of healthy sales and support channels for users of communications products and services. NATA has actively participated in numerous FCC proceedings and has consistently advocated policies that promote innovation and competition in the telecommunications marketplace.

NATA has become especially active in the promotion of innovative applications of computer "intelligence" to business communications systems. In 1991, NATA formed a new membership council, the Alliance of Computer-Based Telephony Application Suppliers ("ACTAS"). ACTAS' purpose is to educate and expand the market for integrated telephone and computer systems, and to speed

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the development of applications of technology that link computers and telephones. ACTAS' 118 members include many of the foremost suppliers of integrated computer-telephone solutions, including computer systems and software used in the telemarketing industry.

#### DISCUSSION

Innovative uses of computer and telephone technology developed and marketed by the members of ACTAS and other members of NATA are greatly improving the efficiency with which businesses can communicate with customers and potential customers. NATA recognizes that computer and telephone technology, like any technology, can be abused. All parties using computer and telephone equipment for telemarketing purposes should behave responsibly and follow reasonable commercial procedures.

However, in addressing consumer issues posed by certain uses of technology, it is important to preserve the ability of businesses to use new technology flexibly and efficiently in marketing activities which the Commission recognizes are generally beneficial to consumers. Notice, ¶ 24. Any regulation of telemarketing should be carefully crafted to avoid unnecessary imposition of costs and to allow for continuing improvements in telemarketing efficiency through new uses of technology.

The FCC's proposed regulations to implement the TCPA generally reflect a balanced and reasonable approach to carrying out the purposes of the Act. In keeping with the intentions of Congress, the Commission appropriately adopts a narrowly targeted approach aimed at eliminating abusive practices while seeking to

avoid unnecessary imposition of regulations that could greatly increase the costs of telemarketing activity or discourage the use of innovative technologies.

In the sections below, NATA discusses a few specific concerns regarding the implementation of the TCPA.

#### I. "AUTODIALER" PROHIBITION AND EXCEPTIONS

The TCPA prohibits certain uses of facsimile machines and "automatic telephone dialing systems." 47 U.S.C. § 227(b)(1). The FCC proposes rules that codify these provisions of the statute. In addition, pursuant to statutory authorization, the FCC proposes to adopt certain exceptions to the TCPA's prohibition on transmitting recorded messages to residences. 47 U.S.C. § 227(b)(2).

The regulations proposed by the Commission appear to accurately reflect the language of the statute and its apparent purposes. NATA wishes to raise one concern regarding the use of the term "autodialer" in the text of the Notice. Paragraph 2 of the Notice correctly summarizes the provisions of the statute and proposed regulations, noting that there is a general prohibition on making calls to residences without prior consent "using an artificial or prerecorded voice." Later in the Notice, however, it is stated that "Auto dialer calls are prohibited to: residential telephone lines . . . ." Notice, ¶ 8; see also id., ¶¶ 18, ¶¶ 23-26 (contrasting "autodialer calls" with "live solicitations"). In these statements, the term "auto dialer call" is apparently being used as a shorthand for "transmission of a prerecorded message."

Automated technology can be applied to the process of making a telephone call in a variety of ways. Today, many businesses engaged in telemarketing and other activities use automated technology to speed up the dialing of calls so that those calls can be more efficiently handled by live agents. For example, software-driven equipment which is sometimes referred to as a "predictive dialer" is widely used in telemarketing centers to automate and centralize the dialing process without "automating" the subsequent telephone conversation. In a typical telemarketing application, a list of names and telephone numbers representing sales leads is fed from a computer into the dialer, which then automatically dials calls on each outgoing line in turn and holds onto each call until there is an indication that it has been answered. Then the dialer immediately "hands off" that call to an available agent. This allows individual agents to concentrate on their interactions with people, without being burdened with the task of repeatedly looking up and dialing telephone numbers, and also saves the time that agents would otherwise spend waiting for calls to be answered.

This use of technology is an integral part of modern telemarketing practice. It is important to distinguish between this type of automatic dialing, which does not involve prerecorded messages and does not lead to the specific problems targeted by the TCPA, and the abusive transmission of prerecorded advertisements to randomly dialed numbers -- the primary abuse at which the legisla-

tion's prohibitions are aimed.<sup>1</sup> NATA urges the Commission to avoid using the term "autodialer" in such a way that this distinction might become blurred.

With respect to the proposed exceptions to the restriction on transmitting recorded messages to residences, NATA believes the Commission has correctly identified a number of circumstances where the transmission of recorded messages can be an efficient means of communication and will not result in the types of abuses targeted by the legislation. A number of businesses and organizations have concluded that the transmission of prerecorded messages is an efficient means of sending important messages en masse to persons with whom the sender has a pre-existing relationship -- for example, National Guard callup notices. NATA supports the Commission's effort to ensure that its regulations preserve the ability to use this technology for important and appropriate

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<sup>1</sup> The statute does prohibit certain uses of "automatic telephone dialing systems," even without recorded messages. Specifically, "automatic telephone dialing systems," defined as "equipment which has the capacity (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers" (47 U.S.C. 227(a)(1)), may not be used to call certain nonresidential lines such as hospital rooms, cellular phone numbers, etc., or to tie up more than one of a businesses' multiple lines. 47 U.S.C. § 227(b)(1)(A) and (D). These restrictions are clearly aimed at problems resulting from the calling of numbers at random or in sequence without any screening and without the use of a preselected list. It is NATA's understanding that these types of problems occur, if at all, much more rarely with automatic dialing systems used by live operators or agents than with prerecorded messages because it is a waste of time for any telemarketer to have live agents making random calls. In response to the inquiry raised in paragraph 19 of the Notice, NATA believes that these restrictions are sufficient to address all those situations where the transmission of recorded messages to nonresidential lines should be prohibited.

purposes while carrying out Congress' intent to eliminate practices that abuse consumers.

## II. TECHNICAL AND PROCEDURAL STANDARDS

The Commission proposes to amend its rules to incorporate the technical requirements of the statute regarding facsimile machines and regarding systems used to transmit prerecorded messages. The regulations require, among other things, that a prerecorded message system must automatically release a line within 5 seconds of receiving "notification . . . that the called party has hung up." 47 U.S.C. § 227(d)(3)(B). An issue is potentially raised as to what constitutes "notification" and what sort of "notification," if any, is actually transmitted to end users. NATA is seeking further information on this issue and will incorporate such information in its reply comments.

## III. TELEPHONE SOLICITATION TO RESIDENTIAL SUBSCRIBERS

The Commission seeks comments on various alternative mechanisms to enable residential telephone subscribers to avoid receiving telephone solicitations to which they object. The options under consideration include (1) a national data base of telephone numbers of subscribers objecting to telephone solicitations; (2) implementation of network features that would allow subscribers to screen out telephone solicitations; (3) special directory markings; (4) industry-based or company-specific "do not call" lists; and (5) time-of-day restrictions. For the reasons

stated below, NATA's initial view is that industry-based or company-specific "do not call" lists constitute the most preferable option. However, NATA reserves the right to supplement or modify its position after reviewing comments filed by other parties.

NATA believes that the alternative of implementing network screening features based on assigning a specific prefix to telemarketers is clearly not feasible or desirable. The administration of the scheme would be a nightmare. Telemarketing activity is currently conducted partly by specialized telemarketing services and partly by in-house personnel of the businesses or organizations whose products, services, or charities are being telemarketed. There is no way to effectively identify beforehand all the businesses that engage in telemarketing on an in-house basis. Any effort to establish a mechanism for consumer objections by assigning prefixes to telemarketing services would simply create discrimination between these services and in-house operations. Any businesses that wished to avoid using the prefix would simply move their operations in-house, where in some instances they might be conducted on a less professional basis.

Similarly, NATA questions the feasibility of any approach based on directory markings. Such an approach could not allow timely or effective compliance even by large telemarketers unless there were a quick, inexpensive means of accessing all directories. It is NATA's understanding that there is no efficient way of electronically accessing all telephone company directory data bases

because there is no standard format for such data bases. Therefore, an approach that requires access to directories is likely to be extremely costly and burdensome.

Time-of-day restrictions, NATA believes, would not be appropriate or effective for the reasons stated in the Notice.

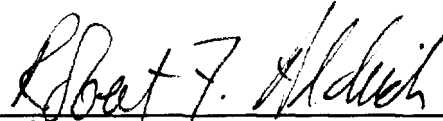
A national data base for registering consumer objections is likely to prove costly and burdensome as well, especially for smaller telemarketing companies and organizations. NATA is particularly concerned that the statutory provisions governing the Commission's implementation of this alternative would require the Commission to issue many detailed prescriptions regarding the practices of the data base provider and the means of accessing the data base. 47 U.S.C. § 227(c)(3)(A)-(L). Forcing the industry into such a rigid mold would be likely to preclude the development of more efficient and innovative mechanisms for meeting consumers' desires over time. NATA is also concerned about the potential of such a data base to become a means for a carrier or consortium of carriers to develop and exploit additional monopoly advantages through the control of telemarketing lists and related information.

Industry-specific or company-specific data bases, on the other hand, appear likely to be less costly and to create fewer risks of conferring monopoly advantages on one company or consortium. NATA believes such an approach would allow greater scope for experimentation and evolution toward the most efficient mechanism for carrying out the purposes of the TCPA. Finally, such an approach makes it easier to ensure that telemarketing activity conforms to



the specific desires of individual consumers who may object to calls from some businesses or organizations while welcoming calls from others.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Robert F. Aldrich", written over a horizontal line.

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